

REMARKS/ARGUMENTS

In response to the Office Action mailed February 23, 2006, Applicants amend their application and request reconsideration. No claims are added or cancelled so that claims 1-5 remain pending.

This Amendment includes a correction to the specification in terms of the document incorporated by reference. As previously explained, there is a co-pending, simultaneously filed and commonly assigned patent application, U.S. Patent Application 09/840,862. In view of questions raised concerning the document incorporated by reference in the present and co-pending patent applications, an extensive investigation has been undertaken. That investigation indicates that the document originally submitted in this patent application with the Response filed November 24, 2004 and having the title as mentioned in the patent application is not a publication. Rather, that document was the paper proposed to be presented at a conference held May 7-10, 2000 in Stockholm. The Proceedings of that Conference were subsequently published. The conference proceedings were edited by Kalev Kuklane and Ingvar Holmer. The Conference Proceedings are available via Internet at www.arbetslivsinstitutet.se/publikatilner/en/detaljerad.asp?ID=457. At the time of the publication, Dr. Holmer was associated with the National Institute for Working Life (Arbetslivsinstitutet), an agency of the Swedish government. Since that time, he has become a professor at the Lund Technical University in Lund, Sweden.

E-mail correspondence with Professor Holmer is attached. As explained in his message, preliminary drafts of proposed papers were supplied to the Conference organizers around January of 2000. Authors were permitted to revise their papers before presentation and the revised papers were submitted in April of 2000. Those revised papers appeared in the Conference Proceedings which was issued sometime during June of 2000. The recollection of the first-named inventor of the present patent application, who is also the first-named author of the publication, that the document

mentioned in the patent application as filed was the original submission to the Conference, and not the document that was revised and that was published as part of the Conference Proceedings, is entirely consistent with Professor Holmer's explanation of the Conference events. As previously noted, the contents of the two documents are very similar, although the authorship is different. The paper actually published was supplied to the Examiner in an Information Disclosure Statement filed in the present patent application with the Response filed November 22, 2005.

Since publications can be incorporated by reference in patent applications but documents that are not published are not properly incorporated, in this Amendment, the specification is corrected to refer to the revised document that was actually published, rather than the initial document, which included a different title and different authorship. In view of the circumstances, this correction does not incorporate any new matter but conforms the patent application to U.S. requirements, consistent with all of the information previously and currently provided.

The Examiner demanded that the specification be amended to include the material appearing in the publication incorporated by reference in the patent application. Applicants respectfully traverse this requirement. As initially pointed out to the Applicants' representative, the publication incorporated by reference is available on the Internet at the address indicated above. Further, the disclosure of the present patent application is similar in pertinent part to the publication. For these reasons, incorporation by reference to the publication is sufficient to meet the disclosure requirements of 35 USC 112 so that the Examiner is requested to reconsider and withdraw the requirement for the addition of passages of the publication to the specification.

Claims 1-5 were rejected as anticipated by Li et al., the publication that is now clearly incorporated by reference in the present patent application. The Examiner pointed out that the three identified inventors of the present patent application are not identical to the four co-authors of Li et al., thereby qualifying Li et al as prior art pursuant to 35 USC 102(a).

In reply to the prior art rejection, Applicants submit statements by the three co-authors of Li et al., Xiaonan Luo, Zhongxuan Luo, and Edward Newton, who are not named as inventors of the present patent application. Those three co-authors disclaim any contribution to the invention described and claimed in the present patent application. Therefore, the disclosure of Li et al. is no longer “by another” so that Li cannot be employed as prior art under any provision of 35 USC 102 against the claims of the present patent application.

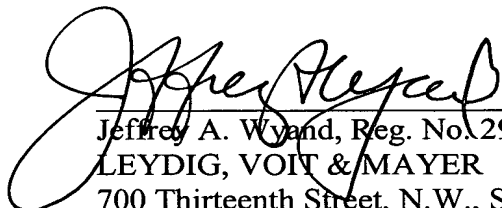
Claims 1-5 were rejected as anticipated by Okabe et al., a non-patent publication cited and supplied with the Office Action of February 23, 2006. Applicants respectfully traverse this rejection.

Okabe cannot anticipate any claim now pending because it does not disclose all of the elements of claim 1, the sole pending independent claim. According to Okabe, and particularly its Figure 3, the Okabe CAD system was designed to simulate garments and to develop two-dimensional patterns using energy minimization equations. The Okabe system does not provide a bio-mechanical model of the human body for simulation of mechanical deformation of the human body, giving consideration to bio-mechanical contact mechanisms between garments and parts of the body including skin. Accordingly, the Okabe system cannot simulate and predict the mechanical comfort of clothing or its bio-mechanical impact on the human body. In fact, not even a single one of the figures of Okabe shows distribution of pressure on a garment produced by the human body.

In other words, because there is no description in Okabe of using databases relating to bio-mechanical and structural characteristics of the human body, as well as structural and mechanical characteristics of textile materials for simulation of the interaction of textiles and the human body and garments made of those textiles, as in the first paragraph of claim 1, Okabe cannot anticipate any of claims 1-5.

Upon reconsideration, claims 1-5 should be allowed.

Respectfully submitted,


Jeffrey A. Wyand, Reg. No. 29,458
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Date: November 13, 2010
JAW:ves

/O=LEYDIG,VOIT&MAYER/OU=WASHINGTON/CN=CHICAGO/CN=JWYAND

From: Ingvar Holmér [ingvar.holmer@design.lth.se]

Sent: Tuesday, September 05, 2006 6:37 AM

To: Wyand, Jeffrey

Subject: Re: NOKOBETEF 6 First European Conference on Protective Clothing May 2000

Dear Mr. Wyand,

The Proceedings of the conference was published a few weeks after the conference and sent to the participants.

This was approximately early or mid June 2000. A pdf file of the Proceedings is available for free downloading at

www.arbetslivsinstitutet.se/publikationer/detaljerad.asp?ID=457

The Proceedings contain the papers presented at the conference and requested in the Call for papers to the conference.

No separate submission was made for the Proceedings (book). Submitted papers (deadline around Jan 2000) were reviewed and authors were able to return their revised papers before the conference. I guess the deadline for this was in early April 2000.

No papers were distributed during the conference. They appeared in print for the first time with the release of the book.

A book of Abstracts was distributed during the conference.

Dr Li is listed with three papers (in Abstract book and Proceedings book), in one of them as first author. Integrated CAD for clothing functional design

Y. Li, E. Newton, X. N. Lou, Z. X. Lou

Institute of Textiles and Clothing, The Hong Kong Polytechnic University, Hong Kong, China

I hope this may help. Feel free to return if you have further questions.

regards,

Ingvar Holmér

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Ingvar Holmér, Professor

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ECPC3 and Nokobetef 8 "Protective clothing - towards balanced protection"

Gdynia, Poland, May 10-12 2006.

6I3M 6th International Thermal Manikin and Modeling Meeting

Hongkong, October 17-19, 2006

Den 06-09-04 21.38, skrev "Wyand, Jeffrey" <jwyand@leydig.com>:

Dear Prof. Holmer:

Since intially attempting to send this e-mail, I have learned that you are no longer at the National Institute for Working Life. Therefore, I apologize for this instrusion. However, I would be grateful if you could direct me to the proper person at NIWL, if there is such a person, who might help with my inquiry.

I am a US patent attorney prosecuting two US patent applications naming Dr. Yi Li of Hong Kong Polytechnic University as the principal inventor. These patent applications were filed in year 2001 and are

11/9/2006

based upon papers given at the First European Conference on Protective Clothing.

There has been certain confusion regarding a paper that differs from the final published form of a paper. The paper was attributed to Dr. Li alone. However, the parallel article in the Conference Proceedings lists four authors (Dr. Li, Edward Newton and two persons both of whom have the family name of Luo). Dr. Li no longer has correspondence that might clarify the situation and no longer recalls the details regarding the publication. The factual situation regarding the paper and the Proceedings publication has become important in the prosecution of the two US patent applications. I am hopeful that you may be able to assist Dr. Li.

While the Conference took place May 7-10, 2000, we are not certain of the publication date of the Proceedings. The copyright date is 2000. Can you determine the month and year, or at least the year, when these Proceedings became publicly available? Do you recall if there was a separate call for papers for presentation at the Conference and a later call for papers for the publication of the Proceedings? I have some information that suggests the papers for the Conference were submitted in April of 2000. Perhaps presenters were permitted to revise those papers for publication in the Proceedings. I presume that the original papers might have been distributed at the Conference.

I would be grateful for any information that you can supply.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application No. 09/840,444

Applicant Zhang et al

Filed: April 24, 2001

TC/AU: 2128

Examiner: H. Jones

Docket No.: 401185

Customer No.: 23548

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building
401 Dulany Street
Alexandria, VA 22314

STATEMENT BY NON-INVENTING CO-AUTHOR

Sir:

I, Zhongxuan LUO am a co-author of a paper entitled "Integrated CAD for Functional textiles and apparel" published in the Proceedings of NOKOBETEF6 and 1st European Conference on Protective Clothing, a conference held in Stockholm, Sweden May 7 to May 10, 2000.

I am familiar with and have reviewed the pending claims in the United States patent application identified above. Although I am properly named as a co-author of the publication, I did not contribute to the invention as described in the claims pending in the U.S. patent application identified above.

Zhongxuan LUO

07 November 2006

Date



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I, Edward NEWTON, am a co-author of a paper entitled "Integrated CAD for functional textiles and apparel" published in the Proceedings of NOKOBETEF 6 and 1st European Conference on Protective Clothing, a conference held in Stockholm, Sweden May 7 to May 10, 2000.

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Edward NEWTON

4-10-06

Date

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Xiaonan LUO

Oct. 8, 2006
Date